



UNITED STATES DEPARTMENT OF COMMERCE  
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12N2/0614

EXAMINER	
J. JORDAN, K.	
ART UNIT	PAPER NUMBER
	35

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application  
COMMISSIONER OF PATENTS AND TRADEMARKS

06/14/96

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- ☐ is extended to run \_\_\_\_\_ from the date of the Final Rejection
- ☒ continues to run 3 months from the date of the Final Rejection
- ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 5/20/96, has been considered with the following affect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - ☐ They raise new issues that would require further consideration and/or search. (See Note).
  - ☐ They raise the issue of new matter. (See Note).
  - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing of an appeal, ~~the proposed amendment will be entered~~ <sup>will be</sup> ☐ will not be entered and the status of the claims in this application would be as follows:

Allowed claims: none

Claims objected to: none

Claims rejected: 27-29, 31-32

However;

- a. ☐ The rejection of claims \_\_\_\_\_ on references is deemed to be overcome by applicant's response.
- b. ☐ The rejection of claims \_\_\_\_\_ on non-reference grounds only is deemed to be overcome by applicant's response.

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

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The Lin et al. animal model is believed to be suggestive of oral administration in humans even if such administration is not predictable based on the opinion of the Wernsdorfer declaration. Obviousness does not require absolute predictability. Even if at the time of the invention no one was administering arthemether orally in humans, the Lin et al. reference teaches an animal model that is suggestive of oral administration which in the absence of evidence to the contrary may be extrapolated to oral administration to humans. Under an obviousness rejection the claims remain unpatentable as the subject matter is suggested by the combination of references.